

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

11 MARK SHARKOZY,) 3:16-cv-00592-HDM-WGC
12 Plaintiff,)
13) ORDER
14 vs.)
15 TERRA-GEN OPERATING COMPANY,)
16 INC., et al.,)
17 Defendants.)
_____)

18 Before the court is defendants' motion to dismiss pursuant to
19 Federal Rule of Civil Procedure 4(m) (ECF No. 12). Plaintiff
20 responded (ECF No. 18) and defendants replied (ECF No. 19).

21 Plaintiff filed the complaint on March 17, 2016 in the Southern
22 Division of the District (ECF No. 1) and the case was transferred to
23 the Northern Division on October 12, 2016 (ECF No. 23). On June 13,
24 2016, plaintiff filed a motion to extend time for service of
25 process (ECF No. 7). Plaintiff asserted that the defendants were not
26 commonly known to his process servers, plaintiff's counsel had been
27 diligent in researching the resident agents, and defendants' counsel
28 declined to waive or accept service. The Magistrate Judge granted

1 plaintiff's motion, giving plaintiff until August 15, 2016 to
2 effectuate service on the defendants (ECF No. 8). The defendants were
3 served with the complaint on August 12, 2016 (ECF Nos. 9-11).

4 Federal Rule of Civil Procedure 6(b) grants courts discretion to
5 enlarge time periods set by the rules. Rule 6(b)(1) provides in
6 pertinent part, that a court may, for good cause shown, grant an
7 extension of time if the request is made before the expiration of the
8 time period to be enlarged. Fed.R.Civ.P. 6(b)(1)(A). "Rule 6(b)(1)
9 clearly authorizes the trial judge to extend time for service of
10 summons and complaint if the [Rule 4(m) 90] day period has not yet
11 expired." *U.S. for the Use and Benefit of DeLoss v. Kenner Gen.*
12 *Contractors, Inc.*, 764 F.2d 707, 711 (9th Cir. 1985). Federal Rule
13 of Civil Procedure 4(m) provides:

14 If a defendant is not served within 90 days after the
15 complaint is filed, the court—on motion or its own after
16 notice to the plaintiff—must dismiss the action without
17 prejudice against that defendant or order that service be
made within a specified time. But if the plaintiff shows
good cause for the failure, the court must extend the
time for service for an appropriate period.

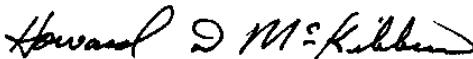
18 Fed.R.Civ.P. 4(m).

19 Defendants argue that this case should be dismissed because the
20 plaintiff failed to serve the complaint within the deadline as
21 established by Federal Rule of Civil Procedure 4(m). Defendants
22 further assert that the plaintiff failed to establish good cause for
23 an extension of service. However, the defendants failed to object to
24 the Magistrate Judge's order granting the extension of time or file
25 a motion for reconsideration. Because the plaintiff requested the
26 extension of time before the expiration of the time period for
27 completing service, and then served the defendants within the extended
28 deadline set by the Magistrate Judge, the defendants have failed to

1 state a factual or legal basis to support a motion dismiss this case
2 under Rule 4(m). Accordingly, the defendants' motion to dismiss (ECF
3 No. 12) is **DENIED**.

4 IT IS SO ORDERED.

5 DATED: This 15th day of November, 2016.

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UNITED STATES DISTRICT JUDGE
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